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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,037	07/08/2003	Manfred Reiter	14693-0195	9074
61263	7590	09/07/2006	EXAMINER	
PROSKAUER ROSE LLP 1001 PENNSYLVANIA AVE, N.W., SUITE 400 SOUTH WASHINGTON, DC 20004				VOGEL, NANCY S
ART UNIT		PAPER NUMBER		
		1636		

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/614,037	REITER ET AL.
	Examiner Nancy T. Vogel	Art Unit 1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 34-36 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 34-36 and 46-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Claims 34-36 and 46-48 are pending in the case.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 34-36 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price et al. (WO 98/15614) (cited by applicants)in view of Kistner et al. (US Patent 5,753,489)..

This rejection is maintained essentially for the reasons made of record in the previous Office action, mailed 6/2/06.

Applicant's arguments filed 6/16/06 have been considered but have not been found convincing.

Applicants have argued that the term "soy hydrollysate" is not described on pages 19-20 of the reference, and Price discloses "an animal cell culture medium formulation that contains at least one plant peptide and/or plant lipids and/or fatty acids for cultivation of animal cells". However, at page 19 lines 3-10 of Price, disclose that plant peptides may be used in culture formulation by "digesting plant extracts with enzymes such as trypsin or chymotrypsin, by methods that are routine the art. Alternatively, plant

peptides in the form of enzymatic digest or hydrolysates may be obtained commercially...". Furthermore, Price et al. discloses that additional nutrients added to medium "may comprise extracts of yeast cells" (page 20, lines 8-20). Furthermore, at page 18 of Price it is disclosed that "at least one peptide, extract, enzymatic digest or hydrolysate of plant protein, and/or at least one plant-derived lipid and/or fatty acid , is added to a basal medium to formulate the complete culture media of the present invention" (lines 16-19) and "Plants suitable as sources of proteins, peptides, lipids and/or fatty acids in formulating the culture media of the present invention include, but are not limited to, rice... soy... potato... and corn (lines 20-23). The only provision is that rice is preferred and wheat is excluded. Therefore, the reference does include the disclosure that soy hydrolysates as a source of peptides, proteins, lipids and/or fatty acids, may be used in medium in addition to yeast hydrolysate. While rice may be a preferred embodiment, it is clear that soy is also disclosed. Therefore, applicant's arguments in this matter are not found convincing. Regarding applicant's argument that kidney cells are not disclosure, the Price et al. reference discloses that the culture medium may be used for a variety of animal cells, including insect, avian, and mammalian cells, which include BHK cells, which are kidney cells (page 7, lines 21-29). Therefore there is a broad disclosure in the reference teaching the use of the medium for culture of any animal cell line. Applicants further argue that there is no motivation or suggestion to combine the references (page 4 of the arguments). However, it is maintained that the Price reference and the Kistner reference are both concerned with the culture of cells for virus production (see abstract of Price et al., see entire document

of Kistner). Therefore, it would have been obvious to one of ordinary skill in the art of cell culture and virus production to combine teachings of the two references. One would have been motivated to do so by the teachings of Price et al., at page 3, which discloses that it is desirable to eliminate animal serum and components from culture medium to avoid the possibility of the presence of infectious agents. Therefore, applicant's argument that there is no motivation to combine the references is not found convincing, and the rejection is maintained.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

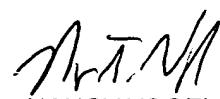
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nancy T. Vogel whose telephone number is (571) 272-0780. The examiner can normally be reached on 6:30 - 3:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D. can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NV  
8/24/06



NANCY VOGEL  
PRIMARY EXAMINER